



Arizona State Senate *Issue Brief*

November 1, 2006

Note to Reader:

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UNDERGROUND STORAGE TANK (UST) PROGRAM

INTRODUCTION

The state Underground Storage Tank (UST) Program, administered by the Arizona Department of Environmental Quality (ADEQ), is designed to prevent, detect and clean up releases of petroleum and other hazardous substances from USTs into the groundwater, surface soils and subsurface soils. The state program also provides financial assistance to UST owners and operators for upgrading and removing old or failing tanks and cleaning up site contamination from leaking USTs, which are also known as LUSTs.

HISTORY AND OVERVIEW

The UST Program was established in 1986 by the Legislature to implement UST regulations adopted by Congress in 1984 as part of the federal Resource Conservation and Recovery Act. The program is funded from a one-cent per gallon excise tax on regulated substances (primarily petroleum), a \$100 tank registration fee and several federal grants. According to the ADEQ, the excise tax currently generates about \$30 million annually. Under the UST Revolving Fund, there are three separate accounts – the UST assurance account, the grant account and the regulatory account. The UST assurance account, which is also known as the State Assurance Fund (SAF), is intended to provide coverage of corrective action costs (clean up costs) incurred by a UST owner or operator or the ADEQ. Most of the revenues from the excise tax are deposited into the SAF.

During the early 1990s when the ADEQ was in the early planning stages of the UST Program, there were very few claims for corrective action costs, and, consequently, the balance in the SAF grew faster than it was utilized. Monies were appropriated during this time period from the SAF for purposes unrelated to the UST Program, such as balancing the state budget, providing money for public transit programs and subsidizing the vehicle emission test costs in Maricopa County when the biennial emissions test was implemented. A total of \$19 million was appropriated from the SAF during the early 1990s for these unrelated purposes. Since 1996, a total of \$7,128,000 has been appropriated from the state General Fund to partially

reimburse the SAF, including a state General Fund appropriation of \$500,000 in FY 2002-2003 (Laws 2001, Chapter 272). The Area B account of the SAF, representing UST revenues generated from every county except Maricopa, has been paid back in its entirety. The Area A account of the SAF, representing UST revenues generated from Maricopa County, has not been repaid a total of \$11,923,700 of the original \$19 million.

Financial Responsibility

Federal and state laws require that a UST owner or operator have a current financial responsibility (FR) mechanism. FR means having the financial ability to pay for both costs of corrective actions and third-party liability claims (property and bodily injury) associated with releases of a petroleum product from an owner's or operator's UST system.

All petroleum marketing firms (e.g., gas stations) are required to have \$1,000,000 available to clean up and pay for any third-party damages resulting from each release (also known as a "per occurrence amount"). For nonpetroleum marketing firms (i.e., governmental entities that own or operate USTs for fleet vehicles), the required per-occurrence amount is based on average monthly throughput. An average monthly throughput of 10,000 gallons or less requires coverage of \$500,000; more than 10,000 gallons requires \$1,000,000 of coverage.

UST owners or operators are also required to carry coverage for the annual "aggregate," which is a limit or cap on the amount that must be covered per year. The aggregate is based on the number of UST systems owned. The annual aggregate coverage required is \$1,000,000 for owners of 1 to 100 USTs, and owners of more than 100 USTs are required to carry \$2,000,000 of aggregate coverage.

Program Evaluation and Recent Changes

An 11-member UST Policy Commission was formed in 1998 to evaluate the overall effectiveness of the UST Program and to review and make annual recommendations on agency policies, guidelines and rules for the program. A

five-member UST Technical Appeals Panel comprised of UST technical experts was also formed that year to participate in administrative hearings on UST decisions or determinations issued by the ADEQ and make technical findings of fact on those decisions or determinations.

In 2004, the Legislature passed S.B. 1306 (Laws 2004, Chapter 273), which phases out the excise tax and SAF beginning July 1, 2006. Many other programmatic changes were made to SAF reimbursement criteria, insurance requirements and copay amounts.

Policy Implications

Eliminating the excise tax and SAF on July 1, 2006, has two implications: 1) UST owners and operators will be dependent on their FR mechanism to pay for all needed corrective actions for those releases reported after June 30, 2006, and 2) the SAF cannot be used for compliance with any state or federal FR requirements after June 30, 2006.

To satisfy FR requirements, UST owners or operators have several options, including: commercial insurance, self-insurance, guarantee, letter of credit, surety bond, trusts or a certificate of deposit. Local government entities may use a government fund, a bond rating test, government guarantee or a government financial test. According to the ADEQ, the most common FR mechanism is UST pollution liability insurance that can be obtained through an insurance agent.

Failure of a UST owner or operator to carry an appropriate FR mechanism can result in enforcement action and fines of up to \$10,000 per day.

ADDITIONAL RESOURCES

- Arizona Department of Environmental Quality
www.azdeq.gov
- UST program information
www.azdeq.gov/envIRON/ust/
- UST Statutes: Arizona Revised Statutes, Title 49, Chapter 6